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Supreme Court of the United States

OCTOBER TERM, ~~194~~ 59

NO. ORIGINAL ~~11~~ 6

THE UNITED STATES, *Complainant,*

v.

THE STATE OF CALIFORNIA.

MOTION OF LAWRENCE WARDS ISLAND REALTY COMPANY FOR LEAVE TO FILE A BRIEF AS *Amicus Curiae* and BRIEF OF *Amicus Curiae*

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Supreme Court of the United States

OCTOBER TERM, 1945

No. ORIGINAL 12

THE UNITED STATES, *Complainant,*

v.

THE STATE OF CALIFORNIA.

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

May it Please the Court:

The undersigned, as counsel for The Lawrence Wards Island Realty Company respectfully moves this Honorable Court for leave to file the accompanying brief in this case as amicus curiæ.

ARCHIBALD N. JORDAN,
Counsel for Lawrence Wards Island Realty Company as Amicus Curiae.

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Supreme Court of the United States

OCTOBER TERM, 1945

No. ORIGINAL 12

THE UNITED STATES, *Complainant,*

v.

THE STATE OF CALIFORNIA.

BRIEF OF LAWRENCE WARDS ISLAND REALTY COMPANY, AS *AMICUS CURIAE.*

I.

Preliminary Statement.

Your petitioner has a case now pending in the Court of Claims of the State of New York, a notice of appeal of the judgment of said Court having been filed therein giving notice of appeal to the Appellate Division of the Supreme Court of the State of New York, Third Department, on January 20th, 1946. This case involves similar facts and questions of law as to title to tideland as those involved in the above entitled case now pending in the Supreme Court of the United States. The decision of the Supreme Court in the above entitled case will affect the case of the Lawrence Wards Island Realty Company, Claimant, against the State of New York.

The title to the tidelands of the Lawrence Wards Island Realty Company originates in the Water Patent issued by the State of New York on July 31, 1811, the tidelands con-

sisting of lands under water and lands under water filled in around Wards Island (formerly called Great Barn Island) situated in the City, County and State of New York, at the junction of the Harlem and East Rivers, in the Harbor of New York. The case now pending in the State Court of Claims concerns about 3¾ths acres of land under water and lands under water filled in, known as Water Lot 31 on the Rosa Map of Wards Island, dated 1872, and also as Tax Lot 112, Section 6, Block 1593, of the Tax Map of the Borough of Manhattan, City of New York. It is situated on the westerly side of Wards Island. The Water Lot is about 786 feet long by an average depth of about 240 feet, of which 44,000 square feet is land under water filled in, and about 90,000 square feet is land under water. The Harlem River is a tideway and a navigable river. A description of this property, Lot 31, is on file with this Court in the case of the *Metropolitan-Columbia Stockholders, Inc.*, v. *The City of New York*, October Term, 1942, No. 824, together with a map showing said lot.

The title to this property is derived from a fee simple unrestricted grant to the foreshore and lands under water surrounding Wards Island issued by the State of New York on July 31, 1811, to the Wards and Lawrences, in common, and under a partition action of *Beach* v. *The Mayor*, in 1870, the predecessors in title to your petitioner, being the heirs of Abraham R. Lawrence, one of the original grantees under the patent of 1811, were awarded, among other lots, said Water Lot 31.

The State of New York, for the first time, has questioned the validity of its own patent issued in 1811, over 134 years ago.

Should the United States be decided by this Court in the above entitled action to be the owner of tidelands at the time of the formation of the United States, the title of the State of California to such tidelands would fall, hence the title of the State of New York to its tidelands, and the title of your petitioner coming through the grant from the State of New York, would also fall.

II.

ARGUMENT

Summary of Argument.

POINT A.

Proprietory title to tidelands facing the rivers and ocean was acquired under the Common Law of England by each of the Thirteen Independent States of the United States at the time of the Revolution. Title was acquired in severalty, and not in common, by the States. See Treaty of Paris, 1783. Article I of that Treaty reads:

> "His Britannic Majesty acknowledges the said United States, viz., New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, to be free, sovereign and independent States; that he deals with them as such, and for himself, his heirs and successors, relinquishes all claims to the Government, proprietory and territorial rights of the same, and every part thereof."

POINT B.

Proprietory title to tidelands fronting the rivers and oceans of other States, viz. Florida, Louisiana, Arizona, New Mexico, and California, were acquired by the United States after the Revolution under the civil law and the terms of treaties with various nations, with the exception of those acquired by the State of Texas when independent, and gained by said State of Texas by right of conquest.

POINT A.

The Treaty of Paris was entered into in 1783 between His Britannic Majesty and each one of the 13 Independent States therein named. The private sovereign rights of the Crown of Great Britain were acquired under the Com-

mon Law of Great Britain, each State of the Original Thirteen States acquiring separate sole proprietory ownership to the tidelands along the rivers and foreshore of the ocean within its own boundaries, subject to public fiduciary rights. See Magna Charta, Section 33, requiring all weirs along the rivers of England to come down. (1215 A D) McKinney's Laws. (N. Y.) Constitution, page 1. Also Chapter 25 Laws of State of New York 1779, and Constitution of the State of New York 1777, ARTICLE XXXVI.

The Magna Charta, Sec. 33, reads:

> "All wears for time to come, shall be put down in the rivers of Thames and Medway, and throughout all England, except upon the sea coast".

POINT B.

The civil law, as modified by the respective treaties, under which the States of Florida, Louisiana, Arizona, New Mexico and California, acquired their tidelands and other lands is set forth in Cooper's Justinian, Liber II, Title I, Sections 1 to 5, inc., pages 67, 68, of the Twelve Tables.

Under the civil law the owners of the uplands adjacent to the river banks also owned the proprietory title to the soil of the river bank. (See Secs. 4 and 5, Id.) The foreshore along the ocean front was public and not the subject of ownership by anyone under the law of nations (Secs. 1 to 5, inc., Id.)

The Treaty of Peace between Spain and the United States, Feb. 22, 1821, by which His Catholic Majesty sold East and West Florida to the United States in 1819 (Malloy Treaties, Vol. II, p. 1651), ARTICLE VIII, and the Secret Treaty between Spain and the French Republic (1800), ARTICLE III, Malloy Treaties, Vol. I, p. 506, concerning the sale of Louisiana, promised on behalf of H. C. M. and engaged to recede the colony or province of Louisiana.

The Treaty of Guadaloupe Hidalgo between the United States and Mexico, Feb. 2, 1848, ARTICLE VIII (Malloy Treaties, Vol. I, p. 1107, at p. 1112), states:

> "In the said territories, property of every kind, now belonging to Mexicans, not established there, shall be inviolably respected".

And its protocol, May 26, 1848, preserves the "legitimate" (Title) under the Mexican Law in California, New Mexico and Texas. This is also referred to in the Gadsden Treaty of 1853, p. 1123 Id.

The Treaty for the Cession of Louisiana, 1803, ARTICLE II, Malloy Treaties, Vol. I, p. 508, between the President of the United States and France ceded "forever and in full sovereignty the said territory, with all its rights and appurtenances as fully and in the same manner as they have been acquired by the French Republic in virtue of the above mentioned treaty concluded with his Catholic Majesty." The Secret Treaty between the French Republic and his Catholic Majesty, the King of Spain, to the Aggrandizement H. R. H. the Infant Duke of Pama in Italy and to the recession of Louisiana, ARTICLE I (Id.) and ARTICLE II—Auguementation to be given H R H, the Duke of Parma, mentions that it may consist of Tuscany, or the three Roman ecclesiastical provinces. These Treaties carry forward the civil law of Rome, forming the base for the French and Spanish civil law. The civil law, however, does not carry into the State of Texas, as the Independent State of Texas claims its tidelands (and other lands) by right of conquest from Mexico before Texas was admitted to the Union as a State. Its tidelands are not, therefore, subject to the Treaty of Guadaloupe Hidalgo.

Texas does not cite any authority for its title to these lands except the right of a conqueror to do what he pleases with his conquest. This right of a conqueror was recognized in the gift of the Donation of Pepin to the Roman Catholic Church about 756 A. D., being the foundation of the temporal (secular) power of that church. Being made under the civil law of Rome, and consisting of lands conquered by Pepin the Short from the Lombards in the eighth century, the principles of the Civil Law of Rome

extended to the lands conveyed by his Catholic Majesty, the King of Spain, to Florida, Louisiana, New Mexico and California, but not to the territory conquered by the Independent State of Texas, where the titles to tidelands vested in fee simple before the Treaty of Guadaloupe Hidalgo. No treaty entered into by the United States or Texas could affect the validity of any private titles in Texas that had previously vested to the date of Conquest or of the Treaty of Guadaloupe. (See Donation of Pepin, Gibbons' Rome, Vol. V, pp. 121-3, Collier Edition (MDCCCXCIX) (Chapter XLIX).)

Conclusion.

Subject to legitimate prior grants:

1. That the ownership in the tidelands along the river banks of the State of California should be held to be originally in the owners of the adjacent uplands.

2. That the foreshore of the coast of California should be held to belong originally to the State.

3. That the title to the lands under water and lands under water filled in outward from the foreshore of the ocean of California should be held to belong to no one according to the law of nations.

4. That similar holdings as to proprietory ownership should be made as to tidelands and river lands of Florida, Territory of Louisiana of 1803, New Mexico, and Arizona.

5. That the proprietory ownership of tidelands in Texas should be held to be in the State of Texas, or in any private owner who held grants before the Conquest of Texas by the Independent State of Texas, or his successor in interest.

6. That the proprietory ownership of tidelands in the 13 Original Independent States should be held to be separate in each State as regards rivers and ocean fronts.

7. That the ownership of the submerged lands bordering the ocean fronts should be held to belong to no one under the law of nations, but that they are subject to the control of the United States for the purposes of commerce and navigation, and national defense.

8. That the ownership of the lands under water and lands filled in along navigable rivers are in the 13 States, until granted out, but that the ownership of each of the Thirteen States is restricted to said tidelands within that State.

Respectfully submitted,

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